



STATE AND FEDERAL POLICY ROLES

As different statewide greenhouse gas (GHG) reduction policies continue to emerge in the United States, more and more businesses are calling on the federal government to enact a single, uniform policy. The prospect of complementary policies between different levels of government—as well as the potential for conflicting and even duplicative regulations—could have significant implications for business. This installment of WRI’s “Bottom Line” series explores the fundamental debates about, and potential outcomes of, different degrees of state and federal policy action.

WHAT IS THE RATIONALE FOR A SINGLE, FEDERAL CLIMATE CHANGE POLICY?

Advocates of a single federal policy seek a level playing field for all businesses affected by the policy, which would mandate uniform regulation across all 50 states. Also, it is easier for corporations to abide by a single regulation rather than adhere to many regulations in different jurisdictions. Given that not all states would enact climate policy, strong federal policy could achieve greater emission reductions than state-led policy action alone.

WHAT IS THE RATIONALE FOR ALLOWING STATES TO MAINTAIN AND DEVELOP THEIR OWN CLIMATE CHANGE POLICIES?

States can serve as laboratories for developing new, innovative policies, and states have historically acted more quickly than the federal government in designing and implementing new policy ideas. State policy innovation is also seen as the impetus for pushing the federal government to act. States can tailor policies to fit their particular circumstances—such as geography and natural resources—and they are arguably more aware of their unique stakeholder interests than is the federal government.

WHAT IS THE RATIONALE FOR JOINT POLICY ACTION BY BOTH STATES AND THE FEDERAL GOVERNMENT?

Most energy and environmental issues are currently handled jointly by state and federal government in order to capitalize on their respective strengths (see above), and a cooperative partnership on climate change policy may be similarly beneficial. For example, the federal government may establish a minimum standard that applies to all states but which allows certain states to exceed that standard and push for greater environmental protection if they choose. Such cooperation may provide businesses with a more level playing field than a scenario where states act alone. The history of U.S. environmental policy suggests that some shared role between levels of government is the most likely outcome for climate change policy.

DOES A COMPREHENSIVE FEDERAL CLIMATE CHANGE POLICY MEAN THAT BUSINESSES WILL NOT BE SUBJECT TO REGULATION BY STATE OR LOCAL GOVERNMENTS?

States currently have the authority to regulate GHG emissions. This could change depending on how federal climate regulations are written. For example, federal legislation could explicitly preempt the states’ authority to regulate GHGs through specific mechanisms such as cap-and-trade while allowing them to regulate GHGs through other policy mechanisms such as emissions performance standards for certain types of sources (e.g. limiting the amount of GHGs a vehicle may emit per mile). Federal preemption could also be more expansive by prohibiting states from implementing any policy that regulates GHG emissions regardless of the policy mechanism, or it could go even further and preempt states’ authority to impose policies that directly or indirectly regulate GHGs (e.g. renewable portfolio standards, land use policies where some other activity such as renewable generation is regulated but the result includes GHG reductions). Conversely, federal legislation could explicitly retain states’ full authority to implement and enforce GHG emission regulations. Under nearly any of these scenarios business could be subject to additional state and local regulations, though to differing degrees. The one exception would be full preemption of all state and local policies that directly or indirectly regulate GHG emissions. The ultimate outcome will depend on state and federal legislation that has yet to be enacted. However, it is unlikely that states will be prevented from implementing policies that reduce GHGs from sources not regulated by the federal government.

IS THE PRESENCE OF MULTIPLE, DIFFERENT POLICIES ACROSS JURISDICTIONS UNUSUAL?

No. Businesses frequently comply with multiple layers of rules and regulations. For example, tax laws often apply at the local, state and federal level and such laws can vary from state to state. The same is true for nearly all areas of policy, including energy and environmental policy. For example, the federal cap-and-trade program for nitrogen oxide (NO_x) emissions requires certain states to participate in the program, but each state is permitted to implement the program as it sees fit within specified guidelines. This has resulted in different requirements across states under one uniform federal program. Additional state policies may be less likely to surface if a federal program is widely viewed to be adequate in addressing the problem in question. For example, the proposed federal Clean Air Interstate Rule (recently rejected by a federal court) would have established a cap on sulfur dioxide (SO₂) emissions that was generally viewed as sufficiently stringent by states. During the design and implementation phase of the program prior to court action no state issued reduction requirements that would have exceeded the proposed federal regulations though they had full authority to do so.

HOW FREQUENTLY HAS FEDERAL POLICY RESULTED IN THE FULL FEDERAL PREEMPTION OF STATE AND LOCAL AUTHORITY?

Rarely. Some form of partial preemption where the federal government applies a single standard that states may exceed is more typical. For example, the federal government maintains national energy efficiency standards for appliances and equipment. Any state is allowed to implement standards for devices that are not regulated by the federal government. States are also permitted to issue standards that exceed requirements for federally regulated appliances if they are granted a waiver to do so by the Department of Energy. One example of full preemption pertains to the storage and disposal of commercial high-level nuclear waste, which is under the sole purview of the federal government.

CAN THE PRESENCE OF STATE POLICIES OFFER OPPORTUNITIES FOR BUSINESSES?

State policies can present opportunities and challenges for business. In terms of opportunities, renewable energy incentives and mandates have enabled businesses to reduce GHG emissions and take advantage of new cutting-edge green power technologies that yield benefits such as reduced vulnerability to fossil fuel price volatility. State policies have also catalyzed the creation of new renewable energy industries. Challenges arise when businesses face additional costs for complying with different state policies. However, as noted earlier, this is not a peculiarity of environmental or energy policy. Companies often confront differing costs of doing business from state to state and country to country in order to comply with a broad range of policy regulations and tax measures.

ADDITIONAL REFERENCES

- WRI's U.S. Climate Policy Resources:
<http://www.wri.org/climate/usclimate>
- WRI White Paper: *Climate Policy in the State Laboratory: How States Influence Federal Regulation and the Implications for U.S. Policy*
<http://www.wri.org/publication/climate-policy-in-the-state-laboratory>
- WRI Policy Brief: *Exploring the Appropriate Roles for States in a Federal Greenhouse Gas Cap-and-Trade Program* (forthcoming)
<http://www.wri.org/publications/climate>
- The Pew Center on Global Climate Change White Paper: *Toward a Constructive Dialogue on Federal and State Roles in U.S. Climate Change Policy*
<http://www.pewclimate.org/statefedroles>